IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.8464 OF 2004

Suresh R. Shetty & Anr. ..Petitioners

Vs.

The Maharashtra Tourism Dev. Corpn. Ltd. & Anr. ..Respondents

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Mr.P.D.Sampat for Petitioners
Mr.Shashi Jain with Mrs. Naina Desai for Respondent no.1.

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 28TH FEBRUARY, 2005.

P.C.

. From the records it appears that Petitioner is in occupation of premises run by M.T.D.C. since the year 1984 without any agreement in writing. Some proceedings were initiated in which orders came to be passed. Those orders are not before us. The case of the Petitioner is that M.T.D.C. there after, filed application for recalling the order dated 21st July, 1999. The order was recalled and the case was fixed for re-hearing on 18th November, 1999. On that day none appeared for M.T.D.C. nor were they represented. Petitioner no.1 was absent, however Petitioner No.2 was present. The Competent Authority proceeded to hear and dispose of the application. The Competent Authority noted that

directions had been given earlier on 21st July, 1999 to M.T.D.C.to enter into agreement and for the Petitioners herein to pay additional compensation. The competent authority noted that the M.T.D.C. had not entered into any agreement nor had the Petitioners herein paid the difference of compensation and subsequently directed eviction by the order dated 13th March, 2000.

. Petitioner, aggrieved preferred an appeal against the said order dated 13th March, 2000. That order was confirmed by the learned Principal Judge of the City Civil Court by his order dated 28th January, 2002.

2. At the hearing of the Petition on behalf of the Petitioner their learned Counsel submits that once the order was passed directing Respondent Corporation to enter into an agreement, the Corporation was bound to enter into an agreement, having not so done, he could not have moved the Competent Authority under the provisions of the Act nor could the competent authority exercise power to review the order dated 21st July, 1999. In these circumstances it is submitted that the impugned order is liable to be set aside. On behalf of the Respondents it was argued that it was a fresh application though styled as a review application.

3. The Principal Judge by his order dated 28th January, 2002 has dealt with this contention whether the order passed was on review application or whether it is a fresh application. Points for consideration were framed. Point no.1 was whether the order dated 13th March, 2000 (16-3-2000) can be termed as an order reviewing the earlier order dated 3rd July, 1999?

. The learned Principal Judge noted the order dated 3rd July, 1999 which was closure of the proceedings by giving liberty to the applicant to file fresh case if necessary in the circumstances. The learned Judge then noted that in fact the order of 21st July, 1999 is the order dated 3rd July, 1999. The learned Judge further noted that the proceedings however are in the nature of fresh application and consequently rejected the contention of the Petition.

4. On the perusal of the impugned order we find that the case was numbered as Eviction Case No.21523 of 1999 before the Authority. The issue was whether the order dated 13th March, 2000 (16.3.2000), can be considered as an order reviewing the order dated 21st July, 1999 or as held by the learned Principal Judge as 3rd July, 1999. The Learned Judge held

that order of 13th March, 2000 is a fresh order by which the eviction has been ordered.

. Admittedly the Petitioners herein have no agreement in writing with the Respondents. At the highest therefore, it can be said that they were in occupation of the premises as licensee though the occupation may be a long occupation from the year 1984. In view of that we do not find that the impugned order suffers from any error on the face of the record on that count considering the positive finding recorded by the learned Principal Judge while answering issue no.2 that the Petitioners herein were in unauthorised occupation.

8. Even otherwise it appears that the Respondents are already in possession of the premises, having executed the order after the order dated 21st February, 2002 of the Principal Judge. There was also no interim relief given by this Court since that date. For all the aforesaid reasons we find there is no merit in the case.

9. Considering the above to our mind this would not be a fit case for this Court to exercise its extra ordinary jurisdiction and consequently the petition stands dismissed.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)